

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

LARRY DEAN ROLLINS,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 03-82-B-W
	)	
MARTIN A. MAGNUSSON, et al.,	)	
	)	
Defendants	)	

**RECOMMENDED DECISION ON MOTION FOR  
PRELIMINARY INJUNCTION**

Larry Rollins has filed a motion for a preliminary injunction (Docket No. 100) in his 42 U.S.C. § 1983 action seeking remedy for the defendants' alleged deliberate indifference to his health during his still ongoing incarceration at the Maine State Prison. I now recommend that the Court **DENY** the motion.

***Discussion***

Rollins suffers from diabetes and claims that he has experienced some serious complications with his vision. Rollins's motion for a preliminary injunction and his reply to the defendants' response essentially complain that the defendants are not giving his acute eye condition the immediate medical attention it requires. He has submitted many exhibits that provide a paper trail of the medical attention he has received to date.

In their response the defendants argue that Rollins's condition is being addressed in a vigilant manner. They have submitted an affidavit of Doctor Celia Englander that is based upon her own observations and treatment of Rollins and upon his medical records. Englander is employed by Correctional Medical Services, Inc. and was previously

employed by Prison Health Services, Inc. In both capacities she served as the medical director at the Maine State Prison, where Rollins is incarcerated. Rollins has complaints of pressure and pain in his eyes. He has been referred to and seen by an outside specialist, Dr. Dreher, for glaucoma testing. According to Dr. Dreher, Rollins does not have glaucoma, nor does he have any increased intraocular pressure. Other than Rollins's subjective complaints, he has no diagnosable medical condition affecting his eyes. Dr. Dreher last saw Rollins in follow-up on December 3, 2003. If Dr. Dreher has any recommendations for further treatment, they will be carried out.

Englander's Affidavit further provides the following additional information. Rollins is diabetic. This condition was first diagnosed during Rollins's incarceration. He has received all appropriate medication for this condition, and his diabetes is under excellent control. Rollins also suffers from tertiary neurosyphilis and paranoid schizophrenia. Both conditions have been treated at the Maine State Prison to the degree that Rollins allows but are felt to be affecting his mental status, being chronic, modifiable but incurable states leading to persistent paranoid delusions. Rollins has complained of his medical care to the Maine Board of Licensure in Medicine, and they have found his complaints to be groundless.

Rollins "has the burden to show that a preliminary injunction should ... be[] granted under the familiar four-part test, which considers the likelihood of success on the merits, the potential for irreparable injury, the balance of equities for and against an injunction, and the effect on the public interest. Narragansett Indian Tribe v. Warwick Sewer Authority, 334 F.3d 161, 166 (1st Cir. 2003) (citing Bercovitch v. Baldwin Sch., 133 F.3d 141, 151 (1st Cir.1998) and Narragansett Indian Tribe v. Guilbert, 934 F.2d 4, 5

(1st Cir.1991)). A preliminary injunction is theoretically available in suits challenging prison conditions but Congress has cautioned courts against unwarranted meddling in prison operations:

In any civil action with respect to prison conditions, to the extent otherwise authorized by law, the court may enter a temporary restraining order or an order for preliminary injunctive relief. Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief and shall respect the principles of comity set out in paragraph (1)(B) in tailoring any preliminary relief.

18 U.S.C. § 3626(a)(2).

Based upon the submissions of the parties, I conclude that Rollins has not carried his burden with respect to establishing his entitlement to injunctive relief. In the underlying Eighth Amendment suit, Rollins will have to demonstrate that he is being denied necessary medical care. The prison must provide Rollins with “the minimal civilized measure of life necessities,” Wilson v. Seiter, 501 U.S. 294, 298 (1991) (quoting Rhodes v. Chapman, 452 U.S. 337, 347 (1981)), and the denial of necessary medical care can arise to the level of an Eighth Amendment violation, see generally Farmer v. Brennan, 511 U.S. 825 (1994); Estelle v. Gamble, 429 U.S. 97 (1976). However, inmates do not have a right to limitless doctor visits or their choice of medications, and negligence and medical malpractice are not actionable. Daniels v. Williams, 474 U.S. 327 (1986) (noting that 42 U.S.C. § 1983 provides a right of action for civil rights violations and cannot be used to sue correctional officials for negligence).

Rollins has not demonstrated that he will more likely than not succeed on the merits. The record, at this juncture, indicates that Rollins is receiving medical attention

and that Rollins is really disputing the proper course of treatment. For the same reason, in view of the defendants' sworn statements that they are attending to Rollins's conditions, Rollins has not convinced me that there is a potential for irreparable injury. And, as for the balance of equities for and against an injunction and the effect on the public interest – viewed here with the caution of 18 U.S.C. § 3626(a)(2) in mind – I believe it would be palpably inappropriate for this court to issue an order dictating that the defendants approach their treatment of Rollins in a different fashion.

### ***Conclusion***

For these reasons I recommend that the Court **DENY** Rollins's motion for a preliminary injunction.

### **NOTICE**

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

December 19, 2003.

/s/ Margaret J. Kravchuk  
U.S. Magistrate Judge

**U.S. District Court  
District of Maine (Bangor)  
CIVIL DOCKET FOR CASE #: 1:03-cv-00082-JAW  
Internal Use Only**

ROLLINS v. MAGNUSSON et al

Date Filed: 05/09/03

Assigned to: JUDGE JOHN A. WOODCOCK JR.  
Referred to: MAG. JUDGE MARGARET J.  
KRAVCHUK  
Demand: \$  
Lead Docket: None  
Related Cases: None  
Case in other court: None  
Cause: 42:1983 Prisoner Civil Rights

Jury Demand: Both  
Nature of Suit: 550 Prisoner: Civil  
Rights  
Jurisdiction: Federal Question

**Plaintiff**

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V.

**Defendant**

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